



0000062716

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission

DOCKETED

DEC 21 2006

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

DOCKETED BY

NR

IN THE MATTER OF THE APPLICATION OF
WORDEN WATER COMPANY FOR TRANSFER
OF ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY.

DOCKET NO. W-02221A-05-0505
DOCKET NO. W-20391A-05-0505

DECISION NO. 69213

OPINION AND ORDER

Open Meeting
December 19 and 20, 2006
Phoenix, Arizona

BY THE COMMISSION:

* * * * *

Having considered the entire record herein and being fully advised in the premises, the
Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On July 15, 2005, Janice E. Worden and Lawrence A. Worden dba Worden Water
Company ("Worden," "Company" or "Applicants") filed an application with the Commission to
transfer the Company's Certificate of Convenience and Necessity ("CC&N") to provide water service
in Pima County, Arizona, that had previously been held by their father.

2. On August 12, 2005, Commission Utility Division Staff ("Staff") filed an
Insufficiency Letter indicating that the Application did not meet the sufficiency requirements of
Arizona Administrative Code ("A.A.C.") R14-2-402(C).

3. On March 20, 2006, April 14, 2006, April 27, 2006, and May 1, 2006, the Company
provided additional documentation to support the Application.

4. On May 8, 2006, Staff notified the Company that the Application met the sufficiency
requirements of the A.A.C.

1 5. By Procedural Order dated May 10, 2006, procedural guidelines were established and
2 the matter was set for hearing on July 7, 2006.

3 6. On May 26, 2006, Worden filed a Motion to Extend Hearing Date because the
4 Company's principals would be out of the state until September 2006. The applicants agreed to
5 waive the time clock for this matter.

6 7. By Procedural Order dated June 15, 2006, the Commission suspended the time clock,
7 and with the agreement of the Company and Staff, determined that given the circumstances of this
8 case, the Commission could consider this matter without a hearing if no party requested one. The
9 June 15, 2006 Procedural Order established new procedural guidelines and directed that notice of the
10 proceeding and right to request a hearing be mailed to all of the Company's customers.

11 8. On July 11, 2006, the Company filed an affidavit of mailing the Public Notice in
12 conformance with the June 15, 2006 Procedural Order,

13 9. On August 31, 2006, Staff filed its Staff Report, recommending approval with certain
14 conditions, including, *inter alia*, the requirement that the Company install a minimum of 20,000
15 gallons of storage capacity, or as an alternative that it install 5,400 gallons of storage and also install
16 a second well with a minimum capacity of 10 gallons per minute. As directed by the June 15, 2006
17 Procedural Order, Staff reaffirmed that if the Company accepted all of Staff's recommended
18 conditions, Staff believed no hearing would be required in this matter.

19 10. On September 19, 2006, Worden filed a Response to the Staff Report. The Company
20 argued that Staff's recommendations concerning the amount of required storage and timeframes was
21 not economically feasible for this very small company. The Company proposed to add 10,800
22 gallons of additional storage in the next 12 months and then an additional 10,800 gallons within 36
23 months thereafter.

24 11. By Procedural Order dated September 23, 2006, new procedural deadlines were
25 established.

26 12. On October 4, 2006, Staff filed a Reply to Worden's Response to the Staff Report.
27 Taking into account the concerns expressed by the Company, in its Reply, Staff modified its
28 recommendations, stating that with respect to storage requirements, it now recommends that the

1 Company install 10,800 gallons of storage now, and another 5,400 gallons of storage within 12
2 months of the effective date of this Order.

3 13. On November 2, 2006, the applicants filed a Response to the Staff Reply. The
4 Applicants state that they accept Staff's recommendations as expressed in the October 4, 2006 Reply,
5 and waive their right to a hearing.

6 14. No entity requested intervention or requested a hearing in this matter.

7 15. Worden is a sole proprietorship that provides water utility service to approximately 23
8 customers near Robles Junction, in Pima County, Arizona. The Company's service territory is
9 located approximately 20 miles southwest of the City of Tucson. The Commission approved the
10 original CC&N in Decision No. 43178 (March 15, 1973). The service area is approximately 120
11 acres (less than one-quarter of a square mile).

12 16. Mr. Arthur O. Worden owned and operated the water company until his death in
13 March 1997. Since his death, his children, Janice E. Worden and Lawrence A. Worden have been
14 operating the Company.

15 17. The purpose of this application is to transfer the CC&N from Arthur O. Worden dba
16 Worden Water Company (deceased) to his children.

17 18. The Company reports that all customer security deposits have been refunded, no
18 refunds are due on meter or line installations; and there are no refunds due on any main extension
19 agreements.

20 19. According to the Company's Annual Report for the year ended December 31, 2005,
21 the Company had annual revenue of \$8,760.65, expenses of \$6,933.55 and a net profit of \$1,827.10.

22 20. Worden's water system consists of one well and a distribution system serving 27
23 connections. The well produces 24 gallons per minute, which Staff states is more than adequate to
24 serve the existing customer base. According to its annual reports, the Company's metered
25 connections have not changed since 2002.

26 21. Staff states that the Company's system lacks adequate storage capacity. A.A.C. R18-
27 5-503 requires that the Company have a minimum storage capacity equal to the average daily demand
28 during the peak month of the year. In August 2005, the Company sold 397,734 gallons of water to 23

1 customers which equates to 558 gallons per day per connection. According to Staff, with 27 current
2 metered connections, the Company's average daily demand during the peak month is 15,066 gallons.

3 22. In its October 3, 2006 Reply to the Company's Response to the Staff Report, Staff
4 recommends the Company install 10,800 gallons of storage now and another 5,400 gallons of storage
5 capacity within 12 months of the effective date of the Commission's order. This would add 16,200
6 gallons of total storage capacity within 12 months. Staff further recommends that in the 14th month
7 after the effective date of this Order, the Company should be required to submit a revised water use
8 data sheet, which Staff would review to determine if additional storage is required. Staff states that if
9 it determines that additional storage is required, the Company shall install an additional 5,400 gallons
10 of storage within 24 months of the Order in this Decision, bringing total storage capacity to 21,600
11 gallons.

12 23. The Applicants accept Staff's recommendations.

13 24. The Arizona Department of Environmental Quality ("ADEQ") has determined that
14 this system is currently delivering water than meets water quality standards required by A.A.C. Title
15 18, Chapter 4.

16 25. ADEQ also reported that this system has major monitoring and reporting deficiencies
17 for failure to provide consumer confidence reports and major operation and maintenance deficiencies
18 for inadequate storage.

19 26. According to Staff, the Company claims that it has addressed its monitoring and
20 reporting deficiencies, but as of the date of the Staff Report, Staff had not been able to verify the
21 Company's compliance by reviewing an updated compliance report from ADEQ. Staff recommends
22 that within six months of the effective date of this Order, the Company file with Docket Control, as a
23 compliance item in this docket, documentation issued by ADEQ showing that this system is in full
24 compliance with ADEQ requirements.

25 27. The U.S. Environmental Protection Agency ("EPA") has reduced the arsenic
26 maximum contaminant level ("MCL") in drinking water from 50 micrograms per liter ("µg/l") to 10
27 µg/l. The date for compliance with the new MCL was January 23, 2006. The most recent lab
28 analysis by the Company indicates that the arsenic level for its well is 7 µg/l. Based on this arsenic

1 concentration, the Company is in compliance with the new arsenic MCL.

2 28. Worden is within the Tucson Active Management Area. The Company supplies less
3 than 250 acre-feet of water per year for non-irrigation use, and is considered a "small provider," and
4 thus not subject to the gallons per capita per day limit and conservation rules. It is only required to
5 monitor and report water use. ADWR has indicated that Worden is in compliance with its monitoring
6 and reporting requirements.

7 29. The Company is in compliance with Commission Orders, rules and regulations.

8 30. A Curtailment Plan Tariff is an effective tool to allow a water company to manage its
9 resources during periods of shortages due to pump breakdowns, droughts, or other unforeseeable
10 events.

11 31. Worden does not have a Curtailment Plan Tariff on file with the Commission. Staff
12 recommends that within 45 days of the effective date of this Order, the Company file with Docket
13 Control, as a compliance item in this docket, a Curtailment Plan Tariff for review and certification
14 by Staff. Staff further recommends that the tariff should generally conform to the sample tariff found
15 on the Commission website at www.cc.state.az.us/utility/foprms/curtailment-std.pdf. Staff
16 recognizes that the Company may need to make minor modifications to the sample tariff according to
17 its specific management, operational and design requirements as necessary and appropriate.

18 32. The Company is current with its property and sales taxes.

19 33. Janice E. Worden and Lawrence A. Worden dba Worden Water Company will provide
20 water service to the transfer area under Arthur O. Worden dba Worden Water Company's authorized
21 rates and charges. Staff recommends that the current approved rates and charges continue in effect.

22 34. Every applicant for a CC&N and/or CC&N Extension is required to submit to the
23 Commission evidence showing that the applicant has received the required consent, franchise or
24 permit from the proper authority. If the applicant operates in an unincorporated area, the company
25 has to obtain a franchise from the county. Worden has filed in this docket a copy of its franchise
26 agreement with Pima County, Arizona.

27 35. Staff further recommends that the Commission's Decision granting the requested
28 CC&N transfer be considered null and void, after due process, should Worden fail to meet the

1 conditions to install additional storage; provide evidence of full compliance with ADEQ
2 requirements; and to file a Curtailment Plan Tariff within the times specified.

3 36. Because an allowance for the property tax expense of Worden is included in the
4 Company's rates and will be collected from its customers, the Commission seeks assurances from the
5 Company that any taxes collected from ratepayers have been remitted to the appropriate taxing
6 authority. It has come to the Commission's attention that a number of water companies have been
7 unwilling or unable to fulfill their obligation to pay the taxes that were collected from ratepayers,
8 some for as many as twenty years. It is reasonable, therefore, that as a preventive measure Farmers
9 should annually file, as part of its annual report, an affidavit with the Utilities Division attesting that
10 the company is current in paying its property taxes in Arizona.

11 37. Staff's recommendation that the Company install additional storage capacity of 16,200
12 gallons within 12 months of the effective date of this Decision would appear to bring this Company
13 into compliance with ADEQ regulations based on 2005 water use data. The parties' agreement as set
14 forth in Findings of Fact No. 22 is reasonable. When the Company submits new water use data in the
15 14th month after the effective date of this Decision, all parties can determine if any additional storage
16 is required to keep the Company in compliance with ADEQ regulations. We decline, however, to
17 determine at this time, how much additional storage, if any, would need to be installed at that time.

18 CONCLUSIONS OF LAW

19 1. Worden is a public service corporation within the meaning of Article XV of the
20 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

21 2. The Commission has jurisdiction over Worden and the subject matter of the
22 application.

23 3. Notice of the application was provided in accordance with law.

24 4. There is a public need and necessity for water service in Worden's service area.

25 5. Upon demonstration of compliance with Staff's recommended conditions, Janice E.
26 Worden and Lawrence A. Worden are fit and proper entities to receive a CC&N to provide water
27 service in the Company's service area.
28

6. Staff's recommendations contained in Findings of Fact Nos. 22, 26, 31, 33, and 35 are reasonable and should be adopted.

ORDER

IT IS THEREFORE ORDERED that the application of Janice E. Worden and Lawrence A. Worden dba Worden Water Company for approval of the transfer of the Certificate of Convenience and Necessity issued to Arthur O. Worden dba Worden Water Company is approved as conditioned herein.

IT IS FURTHER ORDERED that Janice E. Worden and Lawrence A. Worden dba Worden Water Company shall charge the existing rates and charges of Arthur O. Worden dba Worden Water Company.

IT IS FURTHER ORDERED that within 6 months of the effective date of this Decision, Janice E. Worden and Lawrence A. Worden dba Worden Water Company shall file with Docket Control, as a compliance item in this docket, a copy of the ADEQ Approval of Construction for a minimum of 10,800 gallons of additional storage capacity, and shall file within twelve months of the effective date of this Order, an ADEQ Approval of Construction for an additional 5,400 gallons of storage capacity, such that total storage capacity added within twelve months of the Decision is 16,200 gallons.

IT IS FURTHER ORDERED that in the 14th month after the effective date of this Order, Janice E. Worden and Lawrence A. Worden dba Worden Water Company shall file a revised water use data sheet.

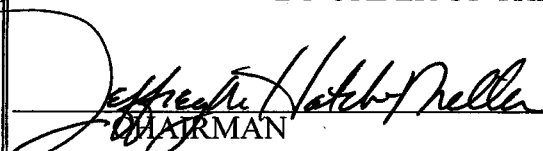

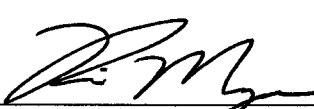

IT IS FURTHER ORDERED that Janice E. Worden and Lawrence A. Worden dba Worden Water Company shall within 45 days of the effective date of this Decision, file with Docket Control, as a compliance item in this docket, a Curtailment Plan Tariff for review and certification by Staff. The tariff shall generally conform to the sample tariff found on the Commission website at www.cc.state.az.us/utility/foprms/curtailment-std.pdf.

IT IS FURTHER ORDERED that this Decision granting the requested transfer be considered null and void, after due process, should Janice E. Worden and Lawrence A. Worden dba Worden Water Company fail to meet the above conditions within the times specified.

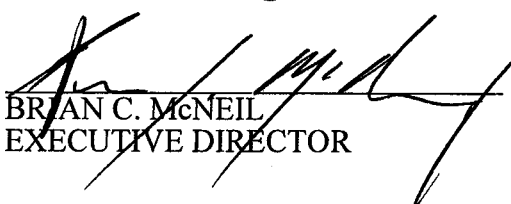
IT IS FURTHER ORDERED that Janice E. Worden and Lawrence A. Worden dba Worden Water Company shall annually file as part of its annual report, an affidavit with the Utilities Division attesting that the Company is current in paying its property taxes in Arizona.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 CHAIRMAN	 COMMISSIONER
 COMMISSIONER	 COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 21st day of Dec., 2006.


 BRIAN C. McNEIL
 EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 6SERVICE LIST FOR:

JANICE E. WORDEN AND LAWRENCE A.
WORDEN DBA WORDEN WATER COMPANY

2 DOCKET NOS.:

W-02221A-05-0505 and W-20391A-05-0505

3
4 Michael F. McNulty
5 Lewis and Roca
6 One South Church Avenue
7 Suite 700
8 Tucson, Arizona 85701-1611
9 Attorneys for Applicant

7 Worden Water Company
15150 West Ajo, #568
8 Tucson, Arizona 85735

9 Mr. Christopher Kempley, Chief Counsel
10 Legal Division
11 ARIZONA CORPORATION COMMISSION
12 1200 West Washington Street
13 Phoenix, Arizona 85007

12 Mr. Ernest Johnson, Director
13 Utilities Division
14 ARIZONA CORPORATION COMMISSION
15 1200 West Washington Street
16 Phoenix, Arizona 85007
17
18
19
20
21
22
23
24
25
26
27
28